

EXHIBIT “D”



Office of the City Attorney

May 14, 2021

VIA OVERNIGHT DELIVERY
AND EMAIL

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**RE: NOTICE OF INTENT TO WITHHOLD FINANCIAL ASSISTANCE PAYMENTS
TO THE SOURCE AT BEACH LLC; RESERVATION OF RIGHTS**

Property: 6986 Beach Boulevard, Buena Park, California.
Project: The Source at Beach; The Source Hotel Project
Agreement: Disposition and Developer Agreement

Dear Messrs. Donald and Min Chae:

This office serves as City Attorney for the City of Buena Park ("City"), and by this correspondence provides notice of the City's intent to take action to protect its interests in the above-identified Property and Project, and to demand that the concerns raised in this letter be expeditiously remediated to the City's reasonable satisfaction.

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As you know the Source Hotel Project (or simply “Hotel Project”) is part of the larger mixed-use project known as “The Source” (jointly the “Project”) that is located at 6986 Beach Boulevard, Buena Park, California (the “Property”). The Project and the Property are both governed by a series of agreements with the City or the former Community Redevelopment Agency of the City of Buena Park (“Former RDA”), the most notable of which is that certain Disposition and Development Agreement (“DDA”) dated October 26, 2010, by and between the Former RDA and The Source at Beach, LLC (“Developer”).¹

As relevant here, the DDA required Developer to proceed with construction and operation of the Project, which was required to include a high-quality (Mobil 3-5 Star or AAA 2-5 Diamond-voted) full-service Hotel Project. To support and incentivize completion of the Project, the Former RDA agreed to provide two (2) forms of financial assistance to Developer that are memorialized in the DDA: (1) a portion of the increased property tax revenues resulting from reassessment of the Property following completion of the Project (also known as “tax increment” revenues); and (2) a portion of sales tax revenues generated by The Source (jointly “Financial Assistance”). The DDA directs the property tax payments to be remitted to Developer annually for the next decade; with the sales tax assistance lasting even longer.

However over recent weeks, the City (which now also serves as “successor agency” to the Former RDA)² has learned of events that justify early termination of this Financial Assistance; and in fact the DDA altogether. Specifically:

- Secured lender for the Hotel Project, Shady Bird Lending LLC (“Lender”), filed an action in state court (*Shady Bird Lending, LLC v. The Source Hotel, LLC*; Orange County Superior Court Case No. 30-2021-01183489-CU-OR-CJC) against Developer’s assignee and lessor of the Hotel Project, The Source Hotel LLC (“Hotel LLC”). This state court action seeking appointment of a receiver and waste in relation to the Hotel Project, and on February 17, 2021, the court ordered the appointment of a receiver (the “Receiver”) whom remains in place as of the date of this letter.
- On February 26, 2021, the Hotel LLC filed a Chapter 11 Voluntary Bankruptcy Petition (the “Bankruptcy Petition”) (United States District Court – Central District of California; Case No. 8:21-bk-10525-ES) to avoid the Lender’s scheduled foreclosure on the Hotel Project, and as of the date of this letter this action remains pending.

Please be advised that appointment of the Receiver, the filing and pendency of the Bankruptcy Petition, and any foreclosure by the Lender are all “Defaults” under the DDA giving rise to the City’s right to terminate both the Financial Payments and the DDA. Key sections of the DDA include the following:

¹ The DDA is recorded on the Property via a Memorandum thereof dated September 4, 2012 (Instrument No. 2012000530409 in the Official Records of Orange County).

² All redevelopment agencies in California were dissolved by the Legislature in February 2012, and the City as “successor agency” to the Former RDA now manages its rights and affairs. (See Health & Safety Code section 34170 *et seq.*)

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- Section 7.1.6 defines “Defaults” of the DDA as including: “Filing of a petition in bankruptcy by or against any Party or appointment of a receiver or trustee of any property of any Party, or an assignment by any Party for the benefit of creditors, or adjudication that such Party is insolvent by a court, and in the case of a filing against a Partner, the failure of such Party to cause the applicable petition, appointment, or assignment to be removed or discharged within one hundred and twenty (120) days.”
- Section 4.5 states: “The Agency’s [now the Successor Agency’s] obligation to make payments of the [Financial Assistance] to Developer shall terminate upon...a Default by Developer under Section 7.1...”
- Section 7.2 states in relevant part that “the Agency and the City shall...have the right to terminate this Agreement in the event of Default by Developer.”

In light of the Receiver and Bankruptcy Petition, and given the unknown future of the Project and Property or Developer’s continued involvement therewith, and the clear language of the DDA quoted above, *the City hereby provides notice that it intends to withhold all future Financial Assistance payments that otherwise might be paid Developer under the DDA unless and until: (a) Developer cures these defaults and proceeds with construction of the Hotel Project to the City’s reasonable satisfaction, in which case the withheld and future Financial Assistance payments might be released on terms acceptable to the City; or (b) the City declares formal default of the DDA and terminates the Financial Assistance, in which case neither the withheld nor future payments will be remitted to Developer.* The Financial Assistance payments will be held in an interest-bearing escrow account established and managed by the City pending a decision on if / how such funds will be remitted.

The City understands that Developer and Hotel LLC are working to identify financing to complete the Hotel Project (which has remained partially constructed for the past two (2) years), and ultimately hopes to restructure existing debt, complete construction, and proceed with operating the Hotel Project as required by the DDA. But unless and until the City is assured that the Hotel Project will be completed and operated as required, either by a Developer or a third-party approved in the City’s discretion, the public interest demands that the City withhold the Financial Assistance payments.

Additionally, the City expressly reserves its rights to declare default and terminate the DDA or any other agreements relating to the Property or Project, and to otherwise seek to enforce its rights thereunder. Given the City’s investment and recorded interests in the Project and Property, the City will continue to actively monitor the pending legal proceedings, and recommends that Developer and other interested parties keep the City apprised of their activities and intentions moving forward should they desire the DDA and Financial Assistance to remain in place.

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Please contact the undersigned should you have any questions or desire to discuss the contents of this letter.

Respectfully,



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cc: Buena Park City Council
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